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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,499	08/01/2003	Frank Olschewski	21295.59(H5644US)	4405
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HOUSTON ELISEEVA 4 MILITIA DRIVE, SUITE 4 LEXINGTON, MA 02421			EXAMINER ROSARIO, DENNIS	
			ART UNIT 2624	PAPER NUMBER
			MAIL DATE 11/30/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/632,499

Applicant(s)

OLSCHEWSKI, FRANK

Examiner

Dennis Rosario

Art Unit

2624

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached Response to After Final Amendment.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

***Response to After Final Amendment***

1. The after final amendment was received on 11/15/07. Claims 1-11 are pending.

***Response to Arguments***

2. Applicant's arguments on page 6, 3<sup>rd</sup> paragraph filed 11/15/07 have been fully considered and states:

**"...the acquired images are images acquired by a detector unit, a video system, or a CCD sensor from a specimen, as opposed to images formed by processing (e.g. single-or multi-stage filtering, compressing, decompressing, reconstruction, enhancing, etc.) of the acquired images."**

Thus, the acquired images or the claimed "acquiring images" of claim 1, appear to be redefined as:

images acquired by a detector unit, a video system, or a CCD sensor from a specimen, as opposed to images formed by processing (e.g. single-or multi-stage filtering, compressing, decompressing, reconstruction, enhancing, etc.) of the acquired images.

Thus, if applicant's requests that a Broadest Reasonable Interpretation (MPEP 2111) be enacted instead of Plain Meaning (2111.01), then the examiner will use the redefined meaning of acquired images and apply the meaning to Fogg. Until notified that the Broadest Reasonable Interpretation be enacted, the examiner will assume Plain Meaning for the remainder of the remarks.

3. Applicant's arguments on page 7, 5<sup>th</sup> paragraph have been fully considered but they are not persuasive and states:

**"Fogg does not disclose determining a trajectory for each pixel of acquired images."**

The examiner respectfully disagrees since Fogg as claimed in claim 1 does disclose "identifying a trajectory for each pixel (via fig. 10C, num. 1026) of the acquired images (fig. 4: Source Bitstream)."

Note that the Source Bitstream represents a group of frames that are acquired by fig. 4, num. 401 according to plain meaning. If applicant wish to enact the Broadest Reasonable Interpretation, the examiner will have to find another disclosure of acquiring images since fig. 4, num. 401 is a decode-subsystem that does not meet the criteria of the redefined "acquiring images" that requires a detector unit or a video system or a CCD sensor in order to acquire images.

4. Applicant's arguments on page 8, 1<sup>st</sup> paragraph have been fully considered but they are not persuasive and states:

**"...Fogg does not disclose applying an operation to the acquired images..."**

The examiner respectfully disagree since Fogg does disclose as claimed an operation (fig. 11F, num. 1056) to the acquired images (as represented in fig. 11A as "Reconstr. Frame Data") along the identified trajectory (as identified previously in fig. 6, num. 606 the method of which is shown in fig. 10C wherein the claimed trajectory is identified in num. 1026).

5. In response to applicant's arguments on page 8, 2<sup>nd</sup> paragraph the recitation "microscopes...are not mentioned...in Fogg" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

6. Applicant's arguments on page 8, 3<sup>rd</sup> paragraph have been fully considered but they are not persuasive and states:

**"Claim 1 is a method for optimizing the image quality of movable subjects imaged with a microscope system comprising determining a respective displacement vector from the acquired images and trajectory for pixels of the acquired images and applying an operation to the same acquired images along the trajectory. This combination of elements is not found in Fogg..."**

The examiner respectfully disagree since Fogg does disclose:

- a) determining (via fig. 6,num. 606 the method of which is shown in figures 10B and 10C)
    - a1) a respective displacement vector (upon the output of fig. 6, num. 606 and in fig. 10C, num. 1029) from the acquired images (fig. 6,num. 652) and
    - a2) trajectory (fig. 10C,num. 1026) for pixels of the acquired images and
  - b) applying an operation (fig. 11F,num. 1056) to the same acquired images (fig. 6,num. 652 and in fig. 11A: Reconstr. Frame Data that corresponds to fig. 11F and "multiple frames" in col. 18, line 41 which are the claimed acquired images) along the trajectory (since a "Trace" operation in fig. 11F,num. 1054 is being used along the trajectory to identify features temporally within the multiple frames.)
7. Applicant's arguments on page 9 with respect to claims 6 and 10 have been fully considered but they are not persuasive since claims 6 and 10 are directed towards a microscope and not "elements of determining a respective displacement vector (remarks, lines 3,4)"; thus, the examiner is not sure what the applicant's arguments are with respect to claims 6 and 10.

**Conclusion**

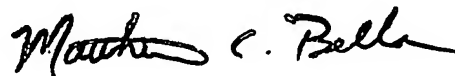
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Rosario whose telephone number is (571) 272-7397. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Bella can be reached on (571) 272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DR

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